BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MONNA CASPER, Claimant, v. IDAHO FALLS CARE CENTER, Employer, and ROYAL INSURANCE COMPANY OF AMERICA, Surety, Defendants.	)	**IC 04-004177** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED OCT 20 2006

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Idaho Falls on July 26, 2005. Claimant, Monna Casper, was present in person and represented by Michael McBride of Idaho Falls; Defendant Employer, Idaho Falls Care Center, and Defendant Surety, Royal Insurance Company of America, were represented by Eric Bailey, of Boise. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, and the submission of briefs. Referee Barclay retired from the Idaho Industrial Commission and the matter was reassigned to Referee Alan Taylor. At the request of the parties, Referee Taylor

conducted a continued hearing on May 23, 2006, in Idaho Falls and the matter subsequently came under advisement on July 14, 2006.

ISSUES

The noticed issues were narrowed at hearing and the issues presently to be resolved are:

1. Whether Claimant's industrial injury of December 25, 2003, caused or aggravated her gynecological condition;

2. Whether Claimant is entitled to additional medical benefits;

3. Whether Claimant is entitled to permanent partial impairment benefits above 5% of the whole person;

4. Whether Claimant is entitled to permanent partial disability in excess of permanent impairment, and the extent thereof; and

5. Whether Claimant is entitled to attorney's fees for Defendants' denial of medical care relating to Claimant's low back injury.

ARGUMENTS OF THE PARTIES

Claimant asserts her industrial accident of December 25, 2003, caused chronic lumbar strain resulting in an 8% permanent impairment of the whole person. She further asserts that her industrial accident also caused or aggravated gynecological conditions, including vaginal vault prolapse, for which she is entitled to medical benefits. Claimant maintains that she is entitled to 40-50% permanent disability, inclusive of impairment, or to retraining benefits. Lastly, she asserts her entitlement to additional treatment for her low back and attorney's fees for Defendants' unreasonable denial of payment of certain medical benefits for treatment of her lumbar strain.

Defendants assert that Claimant's gynecological condition was not caused or aggravated by

her industrial accident, that she is entitled to 5% permanent impairment for her lumbar strain—which Defendants have already paid—and no disability in excess of impairment because the restrictions arising from her gynecological condition are more limiting than those arising from her lumbar strain. Defendants rely upon Dr. Walker's report that Claimant needed no further medical treatment of her lumbar strain after reaching medical stability.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;

2. Claimant's Exhibits C1 through C18 admitted at hearing, and Claimant's Exhibit 19 admitted at the deposition of Dr. Keys;

3. Defendants Employer and Surety's Exhibits D1 through D14, and D16 through D17 admitted at hearing;

4. Deposition of Claimant taken November 23, 2004;

5. Deposition of Anthony D. Keys, M.D., taken December 15, 2005; and

6. Deposition of Dan Wolford taken January 5, 2006.

All objections to Dr. Keys' deposition are overruled. Claimant's objections to the admission of an exhibit during Wolford's deposition are overruled. After having considered the above evidence, and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was born in 1957. She was 48 years old and had resided in the Idaho Falls area for over ten years at the time of the hearing. Claimant attended one year of high school and

thereafter worked as a lab technician, potato trimmer, cashier at a convenience store, and cashier at a grocery store. In 1981, Claimant obtained her GED. In 1983, she obtained her certificate as a licensed practical nurse (LPN). As an LPN, Claimant worked at various facilities, including State Hospital South in Blackfoot, Valley Care Center, Idaho Falls Care Center, Eastern Idaho Medical Center, Smith Clinic, Bingham Memorial Hospital, Progressive Nursing, and Rexburg Nursing Center. She obtained further skills and responsibility in each facility until by 2003 she was working as a charge nurse earning $19.13 per hour.

2. In 1993, Claimant had gastric bypass surgery. Over the next three years she lost approximately 120 pounds.

3. In 1996, Claimant suffered a prolapsed uterus and underwent a vaginal hysterectomy. Craig Hall, M.D., performed the surgery.

4. In 1998, Claimant suffered a prolapsed bladder, or cystocele, and a third degree rectocele. A cystocele is a protrusion of the bladder through the vagina. A third degree cystocele occurs when the bladder completely protrudes out of the vagina. A rectocele is defined as the protrusion of the rectum through the vagina. A third degree rectocele occurs when the rectum protrudes completely through to the outside of the vagina. Deposition of Anthony Keys, M.D., pp. 10-11. Dr. Hall performed posterior vaginal repair surgery.

5. In 2001, Claimant suffered a further rectocele, vaginal prolapse, and ventral hernia. Dr. Hall performed abdominal sacrocolpopexy surgery while Brian O'Byrne, M.D., performed upper hernia repair surgery. Sacrocolpopexy is a surgical procedure performed through an abdominal incision in which the top of the vagina is sutured to the sacrum for support. Keys Deposition, p. 20.

6. On June 2, 2003, Claimant presented again to Dr. Hall with further complaints. Dr.

Hall recorded that the anterior upper one-half of the vagina had a large bulge. He prescribed a pessary, which Claimant wore thereafter. A pessary is a cube or donut shaped instrument placed inside the vagina to hold the bladder, rectum, and cervix in proper place. It is generally a temporary measure until surgery can be performed, or may be a procedure of last resort when surgery is impossible or ineffective. Keys Deposition, p. 12.

7. While working for Employer on December 25, 2003, Claimant prevented a stroke patient, weighing approximately 200 pounds, from falling from his wheelchair. She injured her low back while helping hoist the patient back into his wheelchair. Claimant resided in Idaho Falls at the time of her accident.

8. On December 26, 2003, Claimant presented to the Community Care Center with lumbar pain complaints. She was diagnosed with lumbar strain. Claimant voiced no complaints regarding vaginal problems and there were no indications of urinary or bowel incontinence.

9. On January 7, 2004, Claimant underwent a lumbar MRI scan which revealed a small annular tear at L5-S1, shallow central disc bulge at L5-S1, and a broader disc bulge at L4-5.

10. Over the next several weeks Claimant was treated or examined several times including January 8, 12, 22 and February 4, 2004, and never reported any vaginal complaints or urinary or bowel incontinence. On February 4, 2004, Dr. Walker increased Claimant's work restrictions to 20 pounds.

11. At hearing Claimant testified that in February 2004, she noted falling out sensations in the vaginal area and experienced episodes of urinary and bowel incontinence. She testified that she was "just sitting there" and had not "coughed or anything" to precipitate incontinence. Hearing Transcript of July 26, 2005, p. 77, Ll. 15-16.

12. On February 18, 2004, Claimant presented to Dr. Walker who recorded her reports of two episodes of bowel incontinence, and feelings of bladder urgency but without incontinence. He expressly noted that Claimant voiced no other vaginal complaints.

13. Claimant was seen by physicians on February 25, March 4, 10, 23, and 31, 2004, but expressed no vaginal complaints at any of these visits. On March 10, 2004, Dr. Walker restricted Claimant to lifting no more than 10 pounds.

14. On March 31, 2004, Claimant had a surgical consultation with Phillip McCowin, M.D., who reviewed the MRI findings and opined Claimant was not a candidate for lumbar surgery. He noted that if Claimant's back quieted down she could probably return to nursing from an orthopedic standpoint. However, he also noted that her history of hernia surgery and pelvic floor prolapse may preclude her from normal activities as a nurse.

15. On April 1, 2004, Dr. Hall authored a letter indicating Claimant would not be able to perform any occupation requiring lifting. On April 15, 2004, Dr. Hall performed a surgical anterior vaginal repair of a large cystocele. He noted Claimant had a history of hernias, very poor connective tissue, and marked relaxation of pelvic support. Dr. Hall concluded that Claimant should do no significant lifting. Claimant started on short-term disability with Unum Provident the day of her surgery.

16. On May 17, 2004, Dr. Walker completed a work status form indicating that from an orthopedic perspective, Claimant could return to full-time work with a 20 pound lifting restriction.

17. On May 25, 2004, Dr. Hall completed a functional abilities form for Claimant's application for long-term disability with Unum Provident. Dr. Hall reported that Claimant could not bend, kneel, crawl, reach above her shoulder, or push or pull. She could occasionally climb stairs

but could perform no sedentary work activity which was defined as lifting a maximum of 10 pounds and sitting six to eight hours daily. These restrictions were imposed due to Claimant's gynecological condition. Shortly thereafter Claimant went from short term to long-term disability.

18. On July 21, 2004, Dr. Walker found Claimant at maximum medical improvement from her lumbar injury and released her from further medical care. He opined Claimant was safe to lift up to 20 pounds, and likely up to 50 pounds occasionally. Dr. Walker rated Claimant's permanent impairment due to her low back at 5% of the whole person. He reported that Claimant was ready to be released medically and needed to get out of a sick environment and into a well environment. He concluded: "She has had more than adequate treatment trials, including anti-inflammatory medications, physical therapy, epidural steroid injections and chiropractic. … I think the treatment at this point is to get her into a well environment and away from any medical care." Defendants' Exhibit 1, p. 2. Thereafter Defendants denied Claimant further medical care for her low back.

19. On August 27, 2004, Claimant presented to O. Dan Smith, M.D., with complaints of left hip and back pain. He diagnosed piriformis syndrome, treated Claimant with an injection of DepoMedrol and Marcaine, prescribed medications, and recommended she perform stretches at home. Claimant treated with Dr. Smith on August 27, September 13, October 20, and December 20, 2004, and on April 5, 2005. He provided periodic injections and prescription muscle relaxer and anti-inflammatory medications which improved Claimant's functionality.

20. On December 21, 2004, Dr. Hall stressed that Claimant should do no lifting at all, and needed occupational rehabilitation into a profession requiring no lifting.

21. On July 8, 2005, Dr. Smith examined Claimant and rated her low back impairment at

8% of the whole person. He restricted Claimant to lifting no more than 10 pounds frequently, occasional carrying of up to 20 pounds, with occasional bending, squatting, kneeling, climbing, and reaching. Dr. Smith noted that Claimant had more onerous physical restrictions due to her gynecological condition than due to her lumbar condition.

22. At the time of the last hearing, Claimant continued receiving long-term disability through Unum Provident. She was preparing for a teaching profession by taking classes at Idaho State University with tuition paid by the Idaho Department of Vocational Rehabilitation.

DISCUSSION AND FURTHER FINDINGS

23. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

24. **Causation or aggravation**. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

25. In the present case, Defendants acknowledge that Claimant's industrial accident caused her chronic lumbar strain. Claimant asserts that her industrial accident also caused or aggravated her gynecological condition, including her need for surgical anterior vaginal repair of a

large cystocele as performed by Dr. Hall on April 15, 2004. The record contains no opinion from Dr. Hall relating Claimant's gynecological condition, or her surgery of April 15, 2004, to her industrial accident.

26. In a chart note of May 4, 2004, Dr. McCowin indicated he believed that Claimant's bladder prolapse happened, "by her report," at the time of Claimant's low back injury. Claimant's Exhibit 3, p. 41. Claimant's report to Dr. McCowin stands in contrast to her multiple visits to other physicians between December 25, 2003, and February 2004, in which she reported no vaginal complaints. Furthermore, it is not clear whether Dr. McCowin had fully reviewed Claimant's history of gynecological problems prior to her December 2003, industrial accident, most specifically, Dr. Hall's note of June 21, 2003, documenting Claimant's large anterior vaginal bulge over six months before her industrial injury.

27. Anthony D. Keys, M.D., is a gynecological surgeon, board certified in gynecology and obstetrics. He reviewed Claimant's medical records as created by Dr. Hall. Dr. Keys noted that Claimant had a gastric bypass surgery with subsequent 120-pound weight loss, a vaginal hysterectomy for 3+ to 4+ uterine prolapse, a Marshall-Marchetti-Kranz procedure and a posterior colporrhaphy, to treat stress incontinence and a rectocele, and finally an abdominal sacrocolpopexy—a surgery of last resort—for vaginal vault prolapse, after which Claimant had to wear a pessary—all prior to her industrial accident.

28. Dr. Keys defined and described the various gynecological problems Claimant has experienced. He testified that intra-abdominal pressure producing damage to the endopelvic fascia, pudendal nerve, and the levator ani muscles combine to cause pelvic relaxation syndrome. He testified that the etiology of pelvic relaxation syndrome is multifactorial and may arise from multiple

vaginal deliveries, obesity, chronic coughing, chronic constipation, advancing age, premature menopause, and inadequate post-menopause estrogen.

29. Dr. Keys opined that Claimant's two vaginal deliveries, premature menopause, hysterectomy, and former obesity were the factors which produced her pelvic relaxation syndrome. After reviewing Dr. Hall's notes of June 21, 2003, Dr. Keys opined that Claimant's vaginal vault prolapse as documented in that note was the same condition for which Dr. Hall performed surgery in April 2004, after Claimant's industrial accident. Dr. Hall's note of June 21, 2003, records: "ant. upper 1/2 vag. w/ large bulge." Defendants' Exhibit 11, p. 121.

30. Dr. Keys opined that Claimant's lifting accident of December 25, 2003, did not cause or aggravate her gynecological condition. He testified that Claimant's severe pelvic relaxation was of longstanding origin, as documented by several prior surgeries, and that she needed the April 2004, surgery regardless of the December 25, 2003, accident.

31. Claimant asserts that as an LPN for over 20 years she is a medical professional and it is her opinion that her industrial accident caused or aggravated her gynecological problems.

32. Claimant is a highly skilled and experienced licensed practical nurse, however, she is not a board certified gynecologist and gynecological surgeon as is Dr. Keys. Dr. Keys' testimony reflects a thorough understanding of Claimant's history of gynecological problems. Dr. Keys' training and expertise in gynecology exceed that of Claimant or Dr. McCowin. The Referee finds Dr. Keys' opinion persuasive and concludes that Claimant has not proven that her gynecological condition was caused or aggravated by her industrial accident.

33. **Additional Medical Treatment.** Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or

treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000).

34. Idaho Code § 72-432(4)(a) also provides that an employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer; however, the employee must give written notice to the employer or surety of the employee's request for a change of physician to afford the employer the opportunity to fulfill its obligations under this section. If proper notice is not given, the employer is not obligated to pay for the services obtained.

35. Claimant herein asserts her entitlement to medical treatment for her gynecological condition as provided by Dr. Hall after her industrial accident. However, inasmuch as Claimant has not proven that her gynecological condition was caused or aggravated by her industrial accident, Defendants are not responsible for any medical treatment relating to her gynecological condition.

36. Claimant also asserts her entitlement to additional medical treatment for her low back as provided by Dr. Smith. Dr. Smith is not a physician within the chain of referral. Claimant thus effectively petitions for a post-treatment change of physician from Dr. Walker to Dr. Smith.

37. The lack of a referral is not fatal to an employee's claim for compensation, or

reimbursement for, medical services. Nothing in Idaho Code § 72-432 prohibits a post-treatment petition for a change of physician. Seward v. Pacific Hide & Fur Depot, 138 Idaho 509, 513, 65 .3d 531, 535 (2003); see also Quintero v. Pillsbury Co., 119 Idaho 918, 921-22, 811 P.2d 843, 846-47 (1991).

38. Dr. Walker released Claimant from further medical care in July 2004. On August 27, 2004, Claimant sought out Dr. Smith with complaints of left hip and back pain. Dr. Smith diagnosed piriformis syndrome and treated Claimant with prescription medications and later with periodic injections. Claimant incurred charges of $155.00 for treatment by Dr. Smith on August 27, 2004.

39. On September 3, 2004, Claimant provided Defendant Surety written notice of her treatment with Dr. Smith and expressly requested Defendants authorize treatment by Dr. Smith. By letter dated September 7, 2004, Defendants acknowledged but declined Claimant's written request. Thereafter Claimant treated with Dr. Smith on September 13, October 20, and December 20, 2004, and on April 5, 2005, and incurred additional charges totaling $340.00 for treatment rendered after September 3, 2004. Dr. Smith's treatment was reasonable and helped manage and reduce Claimant's back pain thereby improving her functionality.

40. Claimant is entitled to additional medical benefits from Defendants for the services of Dr. Smith, including medications he prescribed, only after September 3, 2004, the time Claimant gave Defendants notice. Claimant is not entitled to medical benefits for any treatment relating to her gynecological condition.

41. **Impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422.

"Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

42. On July 21, 2004, Dr. Walker found Claimant had reached maximum medical improvement and rated Claimant's permanent impairment due to her low back at 5% of the whole person using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and a DRE II category.

43. On August 27, 2004, Dr. Smith began treating Claimant. He diagnosed piriformis syndrome and treated Claimant with prescription medications and later with periodic injections which helped manage and reduce Claimant's back pain thereby improving her functionality.

44. On July 8, 2005, Dr. Smith rated Claimant's permanent impairment at 8% of the whole person. Dr. Smith mistakenly indicated that Dr. Walker had rated Claimant's impairment at 8% of the whole person. Dr. Smith opined Claimant's impairment was not so much based on lumbar disc disease but rather on nerve root injury in the piriformis area with scar tissue surrounding the nerve and irritation of the L-5, S-1 segment.

45. Dr. Smith's chart notes chronicle his beneficial treatment of Claimant's bilateral piriformis muscle complaints with periodic injections and support the validity of his diagnosis of Claimant's condition.

46. The Referee finds Dr. Smith's opinion persuasive and concludes that Claimant suffers

permanent impairment of 8% of the whole person due to her industrial accident.

47. **Permanent Disability**. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

48. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In

sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

49. In the present case, Claimant was working as an LPN and earning more than $19.00 per hour at the time of her industrial accident.

50. On April 15, 2004, Dr. Hall restricted Claimant to lifting no more than five pounds with no bending, stooping, or sedentary work, and only occasional stair climbing. He emphasized that these restrictions were permanent. All limitations Dr. Hall imposed are due to Claimant's gynecological condition. Dan Wolford testified that he was not aware of a position with any employer in the Idaho Falls area labor market that would accommodate the five pound lifting restriction imposed for Claimant's gynecological condition.

51. On July 21, 2004, Dr. Walker found Claimant had reached maximum medical stability as to her back injury and restricted her to lifting 20 pounds and likely up to 50 pounds occasionally. Industrial Commission rehabilitation consultant Dan Wolford testified that there were positions available in the Idaho Falls labor market for individuals with LPN credentials which would accommodate those lifting restrictions.

52. On July 8, 2005, Dr. Smith restricted Claimant to carrying a maximum of 10 pounds frequently and 20 pounds occasionally, with occasional bending, squatting, kneeling, and climbing. He noted that Claimant's major disability at that time was the five pound lifting restriction imposed by Dr. Hall for Claimant's bladder condition.

53. Based on Claimant's impairment rating of 8% of the whole person, and her various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. However, Claimant's most onerous limitations arise from her non-industrial gynecological

condition. The restrictions imposed by Dr. Hall due to Claimant's gynecological condition entirely eclipse and exceed the restrictions imposed due to Claimant's industrial back injury. Thus, Claimant's restrictions from her industrial injury have no real impact on her actual ability to engage in gainful employment.

54. Claimant has not established her entitlement to any permanent disability in excess of her permanent impairment.

55. **Attorney's fees**. Attorney's fees are not granted to a claimant as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

> **Attorney's fees - Punitive costs in certain cases**. - If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

56. The decision that grounds exist for awarding attorney's fees to a claimant is a factual determination which rests with the Commission. Troutner v. Traffic Control Company, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976).

57. Claimant herein asserts entitlement to attorney's fees for Defendants' denial of medical benefits for her low back after July 21, 2004.

58. On July 21, 2004, Dr. Walker found Claimant at maximum medical improvement due to her low back. He reported that Claimant was ready to be released medically and expressly stated:

"She has had more than adequate treatment trials, including anti-inflammatory medications, physical therapy, epidural steroid injections and chiropractic. … I think the treatment at this point is to get her into a well environment and away from any medical care." Defendants' Exhibit 1, p. 2.

59. Claimant alleges that Defendants' cessation of medical benefits, including refills of her prescription medications, was unreasonable. However, given Dr. Walker's July 21, 2004, chart note, Defendants' conduct was not unreasonable.

CONCLUSIONS OF LAW

1. Claimant has not proven that her industrial accident of December 25, 2003, caused or aggravated her gynecological condition.

2. Claimant has proven she is entitled to additional medical benefits for treatment of her low back rendered by Dr. Smith, including medications he prescribed, only after September 3, 2004, the time Claimant gave Defendants notice. Claimant is not entitled to medical benefits for any treatment relating to her gynecological condition.

3. Claimant has proven she suffers permanent partial impairment of 8% of the whole person due to her industrial accident. Defendants are entitled to credit for all permanent partial impairment benefits previously paid Claimant.

4. Claimant has not proven she suffers any permanent disability due to her industrial injury in excess of her 8% permanent impairment.

5. Claimant has not proven that she is entitled to attorney's fees for Defendants' denial of medical care.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 26TH day of September, 2006.

INDUSTRIAL COMMISSION

/S/_____
Alan Reed Taylor, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20TH day of OCTOBER, 2006, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

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